

certain concentrations as determined by the operating instructions; and

- (d) a means for delivering the dosed formula into a container to the customer as a facial foundation product. --
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Please cancel claim 18.

REMARKS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claims 12-21 were rejected under 35 U.S.C. § 103 as being unpatentable over Klein et al. in view of Krauss et al. and Erdtmann. Applicants traverse this rejection.

Claim 12 has been amended in an effort to more sharply define the invention. The limitations of claim 18 have now been incorporated into claim 1.

The invention is concerned with an apparatus for customizing a facial foundation product at the point of sale to a customer. In this category of product, a customer's chief concern is to find an optimal color match with her skin shade.

Three essential elements are necessary for the claimed apparatus. These are a skin analyzer for reading skin properties, a programmable device receiving the

reading and correlating same with an optimal formula, and a formulation machine for preparing the facial foundation product from variously colored chemical compositions. The formulation machine receives instructions from the programmable device on the optimal formula. This formula is then dosed and blended from a series of dispensers containing separate cosmetic chemical compositions into a receiving bottle. The optimal formula may be altered through customer preferences by manual alteration of the selected optimal formula.

A very important aspect of the invention is that the series of dispensers be at least four in number so as to contain respective dispensers of differently colored cosmetic chemical compositions. There is a separate composition for red, yellow, black and white, these colors being monochromatic building elements that when dosed in the proper ratio to the receiving bottle will achieve the optimal shade for that particular customer.

Klein et al. (U.S. Patent 5,163,010) discloses an apparatus for formulating a custom mixed "cosmetic" product at the point of sale in response to specific input criteria. The term "cosmetic" is meant to be a hair treatment such as a permanent wave solution, hair-conditioner, shampoo, dye or other hair-treatment compounds. See column 1, lines 13-18. There is no suggestion that this disclosure would have any relevance to formulating facial foundations. The reference apparatus does not include dispensers holding differently colored compositions for formulating products of

different color shades. Most especially there is no disclosure that there be four separate cosmetic chemical compositions each of a different color and being respectively red, yellow, black and white. Furthermore, the reference fails to disclose a means for measuring a customer's natural skin coloration and for generating a signal conveying information on the natural skin coloration.

Krauss et al. (U.S. Patent 4,871,262) was cited as teaching the concept of mixing colors in an apparatus for blending and dispensing a cosmetic foundation product. Attention was drawn to column 7 (lines 14-34).

A variety of skin cosmetics are suggested by Krauss et al. These include facial creams, deodorants, suntan lotions and make-up formulations. See column 1, lines 9-10. The aforementioned sentence is the only one that mentions "make-up" or any other aspect of such color cosmetics. The actual focus of Krauss et al. is to supplement a base cream with skin conditioning additives to adjust for the differences in dry, oily or normal skin. See column 1 (lines 10-28).

A review of column 7 (lines 13-14) cited by the Examiner fails to find any mention of the term "pigment" or "color" or even "facial foundation". The reference clearly does not address the issue of precise color matching of a facial foundation to that of a customer's skin shade. The apparatus of Krauss et al. does not disclose the plurality of dispensers that contain the separate monochromatically colored cosmetic formulations that are respectively red, yellow, black and white.

Erdtmann (German Patent 41 10 299) was cited for disclosing an apparatus which measures skin characteristics directly on the skin of the user before the components are mixed together.

Similar to the primary references, Erdtmann does not focus upon the problem of delivering a perfectly matched shade of facial foundation.

A combination of Klein et al. in view of Krauss et al. and Erdtmann would not render the instant invention obvious. Even though all the references are concerned with apparatuses that dose and blend together cosmetic components, they do not focus upon the unique problem of color matching of facial foundations to a customer's skin shade. There are special problems associated with perfectly matched facial foundations. These problems are neither addressed nor resolved in any of the references. Specifically, none of the references suggest that there be at least four dispensers and that each be provided with a separate cosmetic chemical composition of a different monochromatic color. Moreover, these colors must be red, yellow, black and white. Dependent upon the customer's skin color, there must be dispensed a certain volume of each of the compositions thereby creating different ratios of the red, yellow, black and white colored compositions dosed to the receiving bottle. Absent these features, the combination of references could not possibly render the claimed invention obvious.

Claim 20 specifies that the apparatus further includes a means to mark with an identification mark each customized facial foundation product. According to claim 21, the identification mark is a bar code. Thus, many thousands of customers will each have their own unique identification mark correlating to their own unique skin shade. Once measured for an optimal formula (shade), a customer need not even return to the store counter but could by mail simply order that unique shade.

While bar codes are routinely used on products, it is believed that never before has an identification mark or bar code been assigned to an individual consumer. Most often, bar codes are associated with a single product (formula) sold to a myriad of customers. Accordingly, the features of claims 20-21 are not disclosed, taught or suggested by the cited art.

In view of the foregoing amendment and comments, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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